IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10138 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

URMILABEN R BHATT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10138 of 1998

MR RK MISHRA for Petitioner No. 1-4

MR KP RAVAL A.G.P. for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 16/07/2004

ORAL JUDGEMENT

1.0. The petitioners by way of this petition have prayed that the petitioners and teachers at annexure-A to the petition, be extended the benefits of pension and

other retirement benefits on attaining the age of superannuation on par with the primary teachers serving in the public schools. The petitioners have further prayed to permit them to prefer this petition under Order 1 Rule 8 of the Civil Procedure Code.

2.0. The short of the case as that the petitioners and the teachers at annexure-A to the petition, are serving in the grant-in-aid school. It is the case of the petitioners that the teachers who are serving in the grant-in-aid schools are not extended the pensionary benefits and other retirement benefit on their retirement whereas, the benefit of pension is extended to the teachers serving in the public schools on attaining the age of superannuation. The petitioners submit that the provisions of the Bombay Primary Education Act as well as provisions of Bombay Primary Education Rules governing the service conditions right from the initial selection, till the age of superannuation are similar for all purposes. The petitioners further submit that whatever the Circulars / Resolutions issued by the State Government from time to time are also similar for the teachers serving in the primary schools.

2.1. It is also the case of the petitioners that before 15th June, 1991, grant was given to the School Management, but after 15th June, 1991, the Government passed Resolution, whereby direct payment system of salaries was introduced and in view of that the mode of payment of salaries in respect of teachers serving either in the grant-in-aid schools or in the public schools have become same. Hence, the petitioners have approached this Court by way of this petition.

3.0. Having carefully gone through the record of the petition and having carefully considered the submissions of both the learned advocates. it appears that while admitting the petition, this Court has referred to the decision of this Court in the case of Kusumben E. Borasada v. State of Gujarat delivered in Special Civil Application No.3635 of 1982 dated 18th January, 1997. In the said decision the learned Single Judge [Coram : S.K. Keshote, J.] had directed the respondent - State of Gujarat to extend the benefits of pension to the teachers of aided private primary primary schools in the State of Gujarat.

3.1. Pursuant to the order of this Court dated 28th June, 2004. the Director of Primary Education, Gandhinagar, has filed affidavit-in-reply and has stated in para 4 that the petitioners and teachers at annexure-A

to the petition are entitled to the benefits of pension on attaining the age of superannuation on par with the primary teachers serving in the public schools and other retirement benefits as may be computed in terms of money from the date of their retirements. He further submitted that gratuity and pension of petitioner no. 1, who has retired from the service is already fixed by order dated 15th January, 2001 (annexure-R1) and he is also granted retirement benefits.

4.0. In view of the affidavit-in-reply and in view of the statement made by the Director of Primary Education, no further orders are required to be passed in this petition. The respondents are directed to abide by and implement their decision.

Subject to the above direction, the petition is disposed of accordingly. Rule is discharged with no order as to costs.

[K.S. JHAVERI, J.]

/phalguni/